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Supreme Court, U. S.
FILED

JAN 24 1978

MICHAEL RODAK, JR., CLERK

# APPENDIX

# In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-5549

MICHAEL TAYLOR, PETITIONER

v.

COMMONWEALTH OF KENTUCKY, RESPONDENT

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

PETITION FOR CERTIORARI FILED OCTOBER 11, 1977 CERTIORARI GRANTED NOVEMBER 28, 1977

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# CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

March, 1976—Defendant Michael Taylor was indicted in the Franklin Circuit Court in Frankfort, Kentucky for the offense of second degree robbery.

May 24, 1976—Contrary to his plea, defendant Michael Taylor was tried and convicted by a jury in the Franklin Circuit Court of the charged offense of second degree robbery and sentenced to confinement in the penitentiary for five years.

June 22, 1976—Final judgment was entered against defendant.

June 24, 1976—Defendant Michael Taylor filed notice of appeal in the Franklin Circuit Court.

April 1, 1977—Court of Appeals of Kentucky rendered its opinion in defendant's case and affirmed the conviction.

June 29, 1977—Supreme Court of Kentucky denied defendant's motion for discretionary review of the decision of the Kentucky Court of Appeals.

July 11, 1977—Court of Appeals of Kentucky issued mandate in defendant's case.

# Franklin Circuit Court INDICTMENT No. 7844

COMMONWEALTH OF KENTUCKY, PLAINTIFF

v.

MICHAEL TAYLOR, DEFENDANT

Transcript of Record on Appeal

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# FRANKLIN CIRCUIT COURT

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	" against the peace	and dignity of the Commonwea	ith of Emineky.
	A TRUI	BILL	
		Jam M amold	0

WIRELES: Mr. James Maddox, 249 Rosewood, Frankfort, Kentucky.

# COMMONWEALTH OF KENTUCKY

INDICTMENT FOR

MICHAEL TAYLOR

Robbery in the Second Degree

## A TRUE BILL

Presented to the Franklin Circuit Court by the Foreman of the Grand Jury in the presence of the Grand Jury and filed in open Court this

<del></del>	day of	, 19
	Clerk Franklin Circuit Court	
ву: _	Board \$	, D. (

FRANKLIN CIRCUIT COURT

COMMONWEALTH OF KENTUCKY

PLAINTIFF

NO. 7844

JAMES E COLLINS

MICHAEL TAYLOR

The defendant being present in open Court and represented by his attorney, Hon. Michael L. Judy, and the Commonwealth being present, the defendant in person and by his attorney waived formal arm ignment and entered a plea of not guilty to the charges contained in the indictment.

The Commonwealth and the defendant are to agree on a time for pre-trial conference, the defendant to remain on his same bond.

This 5th day of April, 1976.

JUDGE, FRANKLIN CIRCUIT COURT DIVISION II

# FRANKLIN CIRCUIT COURT

# 7844

COMMONWEALTH OF KENTUCKY	PLAINTIFF
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200	ORDER
VS.	APR 23 1976
MICHAEL TAYLOR	JAMES E COLLINS CLERK FRANKLIN CHICUIT COUR DEFENDANT
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On motion of counsel for	Commonwealth this cause is hereby
-	* A
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assigned for trial at 10:00 A. M. Mon	day Vay 24 19.76
in the Circuit Court Room.	
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	Jounn Williams
	JUDGE, FRANKLIN CIRCUIT COURT
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HAVE SEEN:	
*	
Counsel for Plaintiff	
Counsel for Defendant	

#### FRANKLIN CIRCUIT COURT

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS. TRIAL ORDER AND VERDICT

1144 26,1976

MICHAEL WAYNE TAYLOR

DEFENDANT

This matter having come on for trial with the defendant being present in person and represented by his attorney, Michael L. Judy, and the Commonwealth being present and represented by Hon. Ray Corns, both plaintiff and defendant announced ready for trial.

Thereupon, a jury was duly empaneled and after peremptory challenges, the following jury was selected to well and truly try the issues and a true verdict render

Michael Payton Nancy Forsee Jame Clark Susan Williamson Margie Cable Ella Faye Sandlin Hurita F. Lae Robert McCann

William Sanders Lois Ueltschi Ann L. Bryant Gretchen Johnson

The jury was sworn and instructed as to their duties in trying said action.

The attorney for the Commonwealth made his opening statement and presented his proof.

Thereafter, the attorney for the defendant made his opening statement and presented his proof.

At the conclusion of all the evidence the Court instructed the jury as to the law of the case, and the jury retired to deliberate their verdict. After due deliberation, the jury returned into open Court the following verdict:

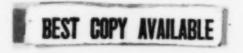
"We, the jury, find the defendant guilty under Instruction No. I and fix his punishment at five (5) years in the penitentiary.

> /s/ William C. Sanders, Jr. Foreman"

This the 24th day of May, 1976.

JUDGE, FRANKLIN CIRCUIT COURT DIVISION I

-	FRANKLIN		COURT	
Fre	nk fort	Kentucky,	June 22	1976
COMMONWEALTH OF KENTUCKY	)			
Plaintiff	)		Jer 20, 1974	
v.	)	JUDGME	NT	
HICHAEL WAYNE TATLOR Defendant	í	Or	Indictment N	lo. (s): 7844
		On	the charge(s	) of:
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This 22adday of June		, 19 76 . the		et abaat
Wayne Taylor				
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pegree confinement under the custody of the (5) years; and it is F sentence of Five (5) and begin at the expiration of) the se defendant under Indictment No. 7 Circuit Court; and it is FURTHER O shall deliver the defendant to the cus such location within this state as the ADTUDGED that pursuant to KRS 532 jail credit time of fifty-two (52)  After fixing sentence, the cour the Court of Appeals of Kentucky with free appeal, including free counsel a Pending appeal (defendant's bail is fi	URTHER Coryears shall intence of 1739 RDERED A stody of the Bureau shall large training and free training free tra	and Corrections in RDERED ANI Fun (assessed to the control of the	his punishme or a period o of ADJUDGED orth schild (c years impo recklia D that the Co rrections her a total of e defendant si sentence impo of his right t cel, and of his could not affo )(defer	that this onsecutive to sed on the ounty Sheriff reunder at Six (6) ye hall receive osed. To appeal to a right to a rd same, adant is to



#### FRANKLIN CIRCUIT COURT CRIMINAL DIVISION INDICTMENT NO. 7844

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS:

ORDER

MICHAEL TAYLOR

DEFENDANT

The defendant, Michael Taylor, having filed his Notice of Appeal and the Court having heretofore declared the defendant to be entitled to proceed in forma pauperis and the defendant having requested leave to proceed on appeal in forma pauperis and the Court having now sustained said Motion and the Clerk of this Court and the official Court Reporter being now directed to prepare the necessary transcript and record for such appeal, IT IS FURTHER ORDERED that the Franklin County Fiscal Court pay to the official Court Reporter of this Court the costs of the necessary transcript on appeal upon submission of her statement of same, together with an attested copy of this Order.

Entered this 2 day of June, 1976.

JUDGE, FRANKLIA CIRCUIT TOURT

ATTEST:

Clerk, Franklin Circuit Court

FRANKLIN CIRCUIT COURT CRIMINAL ACTION NO. 7844

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS:

NOTICE OF APPEAL

MICHAEL TAYLOR

DEFENDANT

Notice is hereby given that the defendant, Michael Taylor, appeals the final judgment and order of this Court entered on June 22, 1976, in this action, with said appeal to be made to the Supreme Court of the Commonwealth of Kentucky.

This 24 day of June, 1976.

Respectfully submitted,

JOHNSON, JUDY & GAINES

Michael L. Judy, Public Defende

326 West Main Street

Frankfort, Kentucky 4060l Attorney for Michael Taylor

This is to certify that a true copy of the foregoing Notice of Appeal has been served upon the Commonwealth by mailing a true copy of same to the Hon. Ray Corns, Commonwealth Attorney, Bridge Street, Frankfort, Kentucky, on this 24 day of June, 1976.

Attorney for Defendant

# Franklin Circuit Court—Criminal Division INDICTMENT No. 7844

COMMONWEALTH OF KENTUCKY, PLAINTIFF

12

MICHAEL TAYLOR, DEFENDANT

Transcript date: May 24, 1976

# [2] APPEARANCES:

Hon. RAY CORNS, Commonwealth's Attorney, Bridge Street, Frankfort, Kentucky 40601; for the Commonwealth.

Hon. MICHAEL L. JUDY, Attorney at Law, 326 West Main Street, Frankfort, Kentucky 40601; for the defendant.

The following is the Transcript of the trial held in the above-captioned case on the 24th day of May 1976, in the Franklin Circuit Courtroom, Franklin county Courthouse, Frankfort, Kentucky, before the Honorable Henry Meigs, Judge, Division One, beginning at about the hour of 10:00 a.m.

[4] The Court. All right. The case of Commonwealth of Kentucky against Michael Taylor is called for trial. What says the Commonwealth?

Mr. Corns. Commonwealth is ready, Your Honor.

The Court. What says the defendant?

Mr. Judy. The defense is ready, Your Honor.

The Court. Call twelve jurors.

[Whereupon, the following twelve jurors were called and sworn by the Court: Michael Peyton, Margie Gable, Gus Smith, Jr., Christine Noblitt, Ella Faye Sandlin, Lois Ulche, Jane Clark, Loretta Faye Lee, Susan Williamson, Robert McCann, Ann L. Bryant, and Gretchen Johnson.]

Mr. Corns. May it please the Court, Mr. Judy, ladies and gentlemen. I'm Ray Corns, the Commonwealth Attorney. It's our duty to prosecute criminal cases in Franklin Circuit Court. The matter coming before you today is a criminal case, the Commonwealth of Kentucky vs. Michael Taylor.

Mr. Taylor is the one that's seated at the far end of defense counsel's table.

Do any of you know him, his family, close friends or associates?

[5] He's represented in this case by Mr. Mike Judy. Mr. Judy is a partner in the law firm of Johnson, Judy and Paul Gaines. Has or does that law firm represent you or any member of your family?

Do any of you know Mr. Judy personally?

The charge against this defendant is he committed the offense of second degree robbery last February the 16th against Mr. James Maddox, the gentleman who's seated over here at the prosecution's table.

Do any of you know Mr. Maddox?

You do?

Ms. BRYANT. Yes.

Mr. Corns. Would the fact that you know Mr. Maddox preclude you from rendering a fair and impartial verdict in this case?

Ms. BRYANT. No.

Mr. Corns. Mr. Smith?

Mr. SMITH. No.

Mr. Corns. It would not.

This is a charge, if the defendant is convicted, carries a penalty of from five to ten years. Is there any of you who if you found the defendant guilty would not be able to fix his punishment between those limits, five to ten years, in prison?

Now, the prosecution has only one witness in this [6] case and that's all that we're ever required to have generally. Would that fact alone, the fact that there's only one witness for the prosecution, keep you from returning a verdict of guilty against the defendant if you believe the prosecution's witness?

The evidence will be to the effect that Mr. Maddox was deprived of his billfold at the time he was robbed.

It contained some ten or fifteen dollars, his personal papers and his house key. Is there anyone of you whom if you found that to be the case would still not be able to return a verdict of guilty and fix his punishment between five to ten years?

Do you know of any reason, perhaps known only to yourself, why you couldn't serve on this case? Just one final question and this is the main question which I or Mr. Judy shall ask you. If you sit in this case will you give both sides, the prosecution and the defendant, a fair trial? Will you do that?

Commonwealth passes the jury, Your Honor.

The Court. Mr. Judy.

Mr. Judy. May it please the Court, Mr. Corns, ladies and gentlemen. I'm Mike Judy and as Mr. Corns indicated I practice in the law firm of Johnson, Judy & Gaines [7] here in Frankfort.

Sitting right there is Michael Taylor who lives in this comunity and is charged with this indictment here

with second degree robbery.

You all understand an indictment is only a charge, the initiating paper which brings us here today, and that in and of itself the indictment is no evidence, no way. It's merely a document that gets us here to this stage in the proceedings. Do you understand that's not to be considered as evidence?

How many of you have sat on a jury before, this term?

Two of you indicated that you know the complaining witness, I believe, Mrs. Bryant you indicated and if I could just inquire briefly, do you just know him by name?

Mrs. BRYANT. I just know him. I don't know him personally. I've been around him for years.

Mr. Judy. Well, let me ask you this. After hearing the evidence you believe the Commonwealth has sustained its burden and found beyond a reasonable doubt the guilt of my client, Mike Taylor, would it embarrass you later to have to see Mr. Maddox and would you feel like you would have to explain to him your verdict or you feel that you could set aside the [8] friendship or just the fact that you know him, render a verdict and not feel accountable for it?

Ms. Bryant. I've never sat on a jury before. I don't

know too much about it.

Mr. Judy. Right. Well, the fact that you know him, that's not going to enter into your deliberation as to the guilt or innocence of Mike here?

Ms. Bryant. I dont know him personally. I just

know him when I see him.

Mr. Judy. Okay. Thank you. Mr. Smith, if I could inquire as to how—

Mr. Smith. I know where he works. That's the only

thing that I know.

Mr. Judy. And how long have you known him, sir? Mr. Smith. Three or four years, I guess.

Mr. Judy. Okay.

Now, have any of you been represented by or close friends of Mr. Corns, our Commonwealth attorney?

I take it by your silence that you're not.

The assistant Commonwealth attorney is Mr. Richard Prewitt. He's not here today. Have any of you ever been represented by Richard or other members of his firm, Prewitt & Prewitt, Allen, Sr. and Allen, Jr.?

Have any of you heard anything about this case or ever read anything about it?

[9] Have any of you heard or know anything about this particular case?

Have any of you ever had occasion or the necessity to take out a warrant or to institute criminal proceedings before?

I take it by your silence that you haven't.

I'm sure you all will agree to this final question as regards the principle of innocence or reasonable doubt. Do each of you all agree and understand that Mike Taylor as he sits there today is a young man who is presumed to be innocent of the charge of second degree robbery, that this innocence has to be overcome by the Commonwealth to meet a standard of what we call beyond a reasonable doubt and that in the event that at the conclusion of the evidence, you have a reasonable doubt then it is your duty to return a verdict of not guilty. Do each of you understand the principle of innocence, the requirement of reasonable doubt? That reasonable doubt must be removed in order to find a verdict of guilty?

Do each of you understand that principle and I try to make it as elementary as I can. Lawyers sometimes have a tendency to make things complicated but I

hope I made it sufficiently clear.

[10] I take it by your silence that each of you does understand.

Thank you.

The Court. Take your list.

Mr. Corns. Commonwealth takes the jury, Your Honor.

The Court. Take your list, Mr. Judy.

Mr. Judy. Thank you, Your Honor. We'd like to deliberate for just a moment if we could.

The Sheriff. Gus Smith, Christine Noblitt are excused.

The Court. Call two more jurors.

[Whereupon, Mr. William Sanders and Nancy Forsee were sworn by the Court.]

Mr. Corns. These questions will be directed to the last two members that have just joined the panel. Have you heard the questions I asked previously?

Mr. Sanders. Yes, sir.

Ms. Forsee. Yes, sir.

Mr. Corns. Having heard those questions do you know of any reason why either of you could not serve as a juror?

Mr. Judy, when he talked to the jurors, advised that each defendant is presumed innocent until proven guilty beyond a reasonable doubt. If you serve in this case will you follow that rule of law?

If, however, the Commonwealth does prove to your [11] satisfaction beyond a reasonable doubt that this defendant did commit the crime with which he's charged, will you return a verdict of guilty?

Do you know of any reason why, if you return a verdict of guilty, you could not fix his punishment between five and ten years in prison for second degree robbery?

If both of you serve will you give both the prosecution and the defense a fair trial?

Commonwealth passes, Your Honor.

Mr. Judy. May it please the Court, Mr. Corns.

I also direct my attention to the last two who came on. You all were sitting in the back. Could you hear the questions that I generally asked?

Was there any question that I asked that you might have registered a reply in your mind that you would have answered if you had been sitting on the panel at that time?

Do either of you know socially or have you been represented by Mr. Corns or Mr. Prewitt?

Have either of you had the opportunity to take out a warrant initiating an action in court?

Do both of you subscribe to the principle of law and the Judge will instruct you that the defendant is presumed innocent until proven guilty with [12] sufficient proof to prove beyond a reasonable doubt

for you to return a verdit of guilty?

Do you both recognize that it is equally a part of your duty as a juror to return a verdict of not guilty if you believe or have a reasonable doubt and that your duty is just as well served in returning a verdict of not guilty if you so believe as a guilty verdict if you believe he's guilty beyond a reasonable doubt?

Thank you.

The Court. Take your licks, Mr. Corns.

Mr. Corns. Commonwealth takes the jury, Your Honor.

The Court. Commonwealth accepts the jury.

Mr. Judy. Defendant accepts the jury, Your Honor. [Whereupon, the following jurors were sworn to well and truly try the issues in this case: Michael Peyton, Margie Gable, William Sanders, Nancy Forsee, Ella Faye Sandlin, Lois Ulche, Jane Clark, Morita Faye Lee, Susan Williamson, Robert McCann, Ann L. Bryant, and Grethen Johnson.]

The Court. Mr. Corns, you may read the indictment

and state your case.

[13] Mr. Corns. May it please the Court, Mr. Judy, ladies and gentlemen. At this time in the trial of every case the attorneys for both sides are afforded the opportunity to briefly tell the jurors in narrative form what their evidence will be. So, very briefly I want to tell you what the evidence will be for the Commonwealth.

The evidence will consist of statements given under oath here by one witness only, the complaining witness, Mr. James Maddox, who sits here at prosecution's table. The substance of this evidence will be that Mr. Maddox has known this defendant, Michael Wayne Taylor, for perhaps fifteen years or more, that Mr. Taylor for some time had come over to Mr. Maddox's house over on this side of the river on Wilkinson Boulevard and they would socialize and he would even provide this boy with a beer to drink and on the evening in question Mr. Maddox will tell you that this defendant and another black subject who has not been identified or apprehended, came to his residence between 7:30 and a quarter of eight on that evening and that he asked them to leave because he had to get up early to go to work at George Taylor Liquor Store here on Broadway. He will tell you that these boys left and that in about fifteen minutes they came back again and knocked on his door and this defendant struck him on his head with his fist and knocked him down and while he was down the other subject held him and the defendant took his house key, Mr. Maddox's house key out of his pocket and that he also took out of another pocket of his [14] clothing his wallet containing some ten to fifteen dollars in cash, his personal papers and social security card, his birth certificate and his rent receipt for the month.

That will be the essence of the evidence of the Commonwealth except that this defendant and the other black subject then fled and Mr. Maddox came down and took out the warrant and the Grand Jury returned this indictment.

It's our duty at this time to read to you the indictment that sets forth the charge. Commonwealth of Kentucky versus Michael Taylor, Indictment Number 7844. The Grand Jury charges on or about the 16th day of February, 1976 in Franklin County, Kentucky, the above-named defendant did commit the offense of robbery in the second degree when in the course of committing theft he used physical force upon James Maddox at the latter's residence, 249 Rosewood, Frankfort, Kentucky, and the defendant unlawfully took from Mr. Maddox a wallet containing ten to fifteen dollars and his house key, against the peace and dignity of the Commonwealth of Kentucky, a True Bill, signed John M. Arnold, Foreman of the March, 1976, Franklin County Grand Jury.

On the basis of the evidence I've stated the Commonwealth will prove all the elements of this charge and will ask you to return a verdict of guilty and fix this defendant's punishment between five and ten years in prison.

Thank you.

The COURT. Mr. Judy, do you care to make a statement [15] at this time?

Mr. Judy. Yes, Your Honor. I will make a statement at this time.

Ladies and gentlemen, as Mr. Corns indicated this is the opening statement to give you some little inclination as to what the case is about.

Michael Taylor, whom I represent, will testify, take the stand, although he's not required to and will tell you that he has known the complaining witness for a number of years and he considered himself to be a friend of this gentleman who's taken on these proceedings against him. But he will deny that he ever struck, knocked down the complaining witness, that he ever took anything from him and that he was even, will deny he was at the premises on the 16th of February when this thing was alleged to have happened.

He will tell you that Mr. Maddox, the complaining witness, has an apartment over in the project and that this apartment is regularly open to people who want to come over there and drink beer, play cards, watch T.V., just generally do whatever they want to do. He'll tell you that he's been there on occasion, that even a few days before the 16th he was there, that he was there with his brother, another fellow, they were watching T.V. and drank some beer and he'll tell you that Mr. Maddox generally kept beer and he gave it to them. I think he'll tell you he's under age; he's twenty years of age, and that I believe to your [16] satisfaction we will convince you that he's not the fellow who's charged or should be charged with knocking this complaining witness down and taking his wallet. I believe at the conclusion of the evidence that you'll be convinced that Mr. Maddox is in fact confused, that he's got his dates and times and people mixed up and that these proceedings were not properly brought against Michael Wayne Taylor and at the conclusion will render a verdict of not guilty.

Thank you.

The Court. Call your witness.

Mr. Corns. The Commonwealth calls James Maddox.

The witness, Mr. James Maddox, having been duly sworn, testified as follows:

#### DIRECT EXAMINATION

By Mr. Corns:

Q. 1. State your name, please.

A. My name is James Maddox.

Q. 2. Where do you live, Mr. Maddox?

A. 349 Rosewood Drive.

Q. 3. Is that in Frankfort, Franklin County, Kentucky?

A. Yes, sir.

Q. 4. How long have you resided there?

[17] A. Huh?

Q. 5. How long have you lived there?

A. I lived there about sixteen or seventeen years.

Q. 6. How old are you, Mr. Maddox?

A. Going on fifty-one (51).

Q. 7. What educational training have you had, how far did you go in school?

A. Fifth grade.

Q. 8. Fifth grade. Where are you employed?

A. George Taylor Liquor Store.

Q. 9. Is that down here on Broadway?

A. Yes, sir.

Q. 10. How long have you been working down there?

A. Oh, about ten or twelve years.

Q. 11. What was your salary at the time this incident occurred? How much money were you making per week working at the George Taylor Liquor Store last February?

A. Oh, about eighty (80) some dollars.

Q. 12. That would be about \$80.00 gross a week?

A. Yeah.

Q. 13. Tell the jurors how long you have known this defendant, Michael Wayne Taylor.

A. I've known him about fifteen years.

Q. 14. Fifteen years. Tell them how many times he's come [18] over to your place before February the 16th? How many times has he been over there? Do you have any idea?

A. Well, I'd say about three times.

Q. 15. How many times?

A. Three.

Q. 16. He'd been over there about three times before February the 16th. What would you and he do when he came over there before the night of the 16th?

A. We just sat around a drank a couple of beer,

talked and listened to T.V.

Q. 17. What time did he come to your residence on the night of February the 16th, 1976?

A. He came there about 8:15.

Q. 18. 8:15. And just in your own words tell the

jury what happened.

A. Well, Mike Taylor came to my house and knocked on the door. I opened the door and he said let us in. I opened the door and I said boy, I got to go to bed. I got to get up early in the morning and go back to work and he said okay and they left and they came back about fifteen more minutes and they knocked on the door again and said you ain't going to bed and push their way in.

Q. 19. He told you you weren't going to bed?

A. Yeah. They pushed themselves in. I opened the [19] door and let them in and I said boy, I got to go to bed. He said no you ain't neither so I said well, I'll call the police and get you out of my house and I stepped out the door and this other boy jumped on my back and Mike Taylor hit me in the side of the head.

Q. 20. Who hit you in the side of the head?

A. MIKE. He hit me in the side of my head and then he wrestled me, the other boy, Mike Taylor pushed me down on the ground and Mike Taylor wrestled with my pocket and got my pocketbook out and got my key and then broke off running. Q. 21. In which pocket did you have your house key?

A. Right there in the left pocket.

Q. 22. Who took the house key out of your pocket?

A. Mike Taylor.

Q. 23. Would you point out to the jury the Mike Taylor about whom you're talking?

A. Fellow sitting right over there (indicating the

defendant).

Q. 24. Where did you have your wallet located?

A. In my back pocket.

Q. 25. Who got that out of your back pocket?

A. Mike Taylor.

Q. 26. How much money, if any, did you have in your wallet?

[20] A. I had ten to fifteen dollars.

Q. 27. What other papers, if any, Mr. Maddox, did you have in your wallet?

A. Had my Social Security, my rent paper where I

paid my rent, my bus ticket.

Q. 28. Have you ever received your wallet back?

A. No.

Q. 29. Did you ever get your money back?

A. No.

Q. 30. Did you ever get any papers back?

A. No.

Q. 31. Have you ever gotten your house key back?

A. No, sir.

Q. 32. And your residence is located in Frankfort, Franklin County, Kentucky?

A. Yes.

Q. 33. Is that correct?

A. Yes.

Q. 34. After this took place what did you do?

A. I went and called the police on them and they come by there and I told them what happened.

Q. 35. Did you subsequently take out a warrant against Mike Taylor?

A. Yeah.

Q. 36. And then you later appeared before the Franklin County Grand Jury to seek an indictment?
[21] A. Yes, sir.

Q. 37. How long did you say you had known Michael Taylor? How many years?

A. About Fifteen.

Q. 38. Did you know the other person who was with him on that night?

A. No, sir.

Q. 39. You'd never seen him before?

A. No.

Q. 40. Have you seen him since that time?

A. Well, I seen him one time.

Q. 41. But you still don't know who he is?

A. No.

Mr. Corns. That's all.

The Court. Cross examine.

#### CROSS EXAMINATION

By Mr. Judy:

Q. 1. Sir, I'd like to ask you. Did you say your name was Maddox or Matlock?

A. Maddox.

Q. 2. Sir?

A. M-A-D-D-O-X.

Q. 3. And you live on Rosewood Drive down in the project off Wilkinson Street, is that right?

[22] A. Yes, sir.

Q. 4. And you work at George Taylor Liquor Store. How are you employed there? In what capacity are you employed?

The Court. What's your job at the liquor store?

A. Oh, well, working selling beer and whiskey, carry out.

Q. 5. Are you a bartender?

A. Yes, sir.

Q. 6. And how long have you worked there?

A. Oh, I'd say about ten or twelve years.

Q. 7. And you indicated to us the events that happened. What day of the week did this happen on that you were knocked down and your wallet was taken?

A. Happened on Monday.

Q. 8. Had you worked that day?

A. Yes, sir.

Q. 9. And had you done any entertaining, have anybody over that day, that afternoon after work?

A. No.

Q. 10. You haven't had other people over at your place though, haven't you?

A. Yes, sir.

Q. 11. And you provided beer for them, isn't that correct?

A. Yeah.

[23] Q. 12. You had even had Mike Taylor and some of his friends or some other people that maybe live in the project, they've been over at your house on occasions, haven't they?

A. That's right.

Q. 13. And you'd provided beer for them, hadn't you?

A. I give them beer when they ask me for it.

Q. 14. All right. Now, this place that you lived in, is it an apartment or is it a house or what is it, Mr. Maddox?

A. It's a apartment.

Q. 15. And how long have you lived at this apartment?

A. Oh, I'd say about ten or eleven years, something like that.

Q. 16. Now, what time of day did you say that Mike Taylor supposedly came to your place on the 16th?

A. About 8:15.

Q. 17. And was anybody else there in the apartment with you?

A. No.

Q. 18. Did you allow the boys in? Did they come, did they actually get inside for any length of time?

A. Not unless I let them in.

Q. 19. Did you let them in?

A. Yeah, I let them in.

[24] Q. 20. And did you give them a beer or anything while they were in there?

A. Not the night they robbed me I didn't.

Q. 21. Not that night. What did they do when they came, when you let them in?

A. Well, they just walked on in. I told them, I said boys I've got to go to bed and they went back out again and the next time they come and knocked on my door and they forced their way in.

Q. 22. Do you normally go to bed at 8:15?

A. No. I go to bed right around 9:00.

Q. 23. Had you had anything to drink that night?

A. No.

Q. 24. You hadn't had anything to drink on that Monday?

A. No.

Q. 25. Do you wear glasses or do you ever wear glasses?

A. No.

Q. 26. Do you own a pair of glasses?

A. No, sir.

Q. 27. All right. If you recall, what was the weather like that day?

A. Oh, it's about like it is today.

Q. 28. About like today?

A. Yes.

Q. 29. Now, just want to go over it one more time. In your [25] own eyes you believe Mike Taylor knocked you down and took your wallet away from you, is that what you're telling this jury?

A. Yes, sir.

Mr. Judy. That's all I have.

Mr. Corns. No further questions, Your Honor.

Thank you, Mr. Maddox.

[Witness excused.]

Mr. Corns. That's the case for the Commonwealth, Your Honor.

Mr. Judy. I would like to make the appropriate motion, Your Honor.

[Whereupon, the following was heard in Chambers.]

Mr. Judy. At the conclusion of the Commonwealth's evidence comes the defendant and moves the Court to enter an order directing a verdict in favor of the defendant herein, on the grounds that the Commonwealth has failed to meet its burden of proof and make out a prima facie case setting forth the elements of the offense changed in the indictment herein, against the [26] defendant, Michael Wayne Taylor, and therefore, a verdict of not guilty should be entered.

The Court. Let it be overruled.

The witness, MR. MICHAEL WAYNE TAYLOR, having been duly sworn, testified as follows:

#### DIRECT EXAMINATION

. By Mr. Judy:

Q. 1. State your name for the record.

A. Michael Wayne Taylor.

Q. 2. How old are you, Mr. Taylor?

A. Twenty.

Q. 3. And where do you reside?

A. Where do I stay in other words?

Q. 4. Where do you live?

A. With my mother, step father.

Q. 5. And where do they live?

A. 303 East Third Street.

Q. 6. And are you employed?

A. Yes, sir.

Q. 7. And where are you employed?

A. George's restaurant.

Q. 8. How long have you been employed there?

[27] A. For the past five years, six.

Q. 9. Now, you've heard Mr. Maddox indicate and tell this jury that on Monday, February the 16th you came to his residence, tried to gain entry and he refused, said he wanted to go to bed and you then knocked him down and took his wallet. Now, did you in fact ever knock him down, try to gain entry or take his wallet from him?

A. No, sir. I've never had a reason to do anything like it.

Q. 10. Did you do that on that day?

A. No, sir. I didn't.

Q. 11. And have you ever struck him?

A. No, sir. I haven't.

Q. 12. Now, how long have you known Mr. Maddox?

A. About three or four years.

Q. 13. And have you been to his house on other occasions?

A. Several times. Several times.

Q. 14. And have you been there when he was there and in his company and in the company of other people?

A. Yes, sir.

Q. 15. And what generally happened on occasions when you would be there?

A. Like he said, we sat around and drank, watched television, played cards, talked, you know, different [28] things.

Q. 16. Now, has that been over the span of the last

few years?

A. Yes, sir.

Q. 17. Now, were you at his residence on the 16th of February?

A. No, sir.

Q. 18. Prior to that day, had you on any other previous day been to his residence?

A. Maybe a few days before.

Q. 19. A few days before. Do you recall who you were with if anybody and do you recall what you did when you were there?

A. Yes, sir.

Q. 20. Who were you with?

A. Robert Chenault and my brother, Bill.

Q. 21. What's your brother's name?

A. William Taylor.

Q. 22. And what did you do while you were there?

A. Just drank beer and sat around and talked.

Q. 23. Now, on the 16th of February which was a

Monday, what did you do that day?

A. Well, I came out about 11:00 that morning and I worked, cleaning up the restaurant, left the restaurant and I think I went up on the college for [29] awhile. All right. I come back downtown. I went home.

I laid down for awhile then I went out around 7:00 that night. It was raining. All right. I was with two other guys, you know, and we sat in the car from 7:00 till about 2:00 in the morning in the rain, you know, just like fire come, a ball of fire rolled in the street, hit a power plant in South Frankfort and knocked all the lights out and everything and I can prove that I was in the car.

Q. 24. Where were you all parked? Were you down in—

A. Right in front of that grocery over on Murray Street.

Q. 25. And on that night did you all leave at any time and go over to where Mr. Maddox's apartment is?

A. No. The car wasn't even running.

Q. 26. Was the car broken down?

A. Yes, sir.

Q. 27. Whose car was it?

A. Fellow named Robert Hayden.

Q. 28. And who else was with you?

A. This guy by the name of, well, my cousin for one. He left and this other guy named Wade got in.

Q. 29. What's his name? What's your cousin's name?

A. Robert Davis. This other fellow named Wade got in the car, you know.

Q. 30. And did you at any time since the taking of this [30] warrant talk to Mr. Maddox or learn the circumstances surrounding his taking this warrant out against you?

A. No, sir. I didn't even know he had a warrant for me. I didn't even know it. The police picked me up. I was going to some work and they picked me up. I didn't even know what was going on. Q. 31. All right. Have you ever had an occasion to want to strike Mr. Maddox?

A. We've always been too close for that.

Q. 32. You all have been friends?

A. We've been friends ever since I've known him.

Q. 33. And you've been in his house on several occasions?

A. Yes, sir.

Mr. Judy. That's all.

#### CROSS EXAMINATION

Mr. Corns:

Q. 1. You say you're twenty years of age?

A. Yes, sir.

Q. 2. How much education and training have you had?

A. Ninth grade.

Q. 3. Where did you say you're employed?

A. George's Restaurant.

Q. 4. Where is that located?

[31] A. I don't know exactly the address but it's on Murray Street.

Q. 5. On Murray Street?

A. Sells food and stuff.

Q. 6. Is that what they call Spencer's Cafe?

A. Yes, sir.

Q. 7. How long did you say you worked there?

A. Past five years.

Q. 8. What were your working hours there?

A. I just worked like a couple of hours, maybe three or four hours a day, cleaned up in the morning.

Q. 9. You just cleaned up?

A. Yes, sir. Before and after lunch.

Q. 10. And how much did you get paid a day for cleaning up?

A. They paid me \$40.00 a week for doing it. They didn't pay me by the hour.

Q. 11. Now, on the day in question what did you say you did after you cleaned up at 11:00?

A. I went to the college.

Q. 12. How long did you stay at Kentucky State University?

A. I stayed about a couple of hours, I guess.

Q. 13. That would be about what, 1:00?

A. Yeah, I guess so.

Q. 14. What did you do after that?

A. I went back home and laid down. I was feeling bad, [32] you know.

Q. 15. Had a what?

A. I was just feeling bad. I went home and laid down.

Q. 16. So you got back home about what time?

A. About maybe say 2:00, 2:30, something like that.

Q. 17. And you went to bed?

A. Yes, sir.

Q. 18. How long did you stay in bed?

A. It was about 2:30 when I went to bed and it was about 7:00 when I woke up.

Q. 19. So you were in bed then till 7:00, is that right?

A. Yes.

Q. 20. You live with whom?

A. My mother.

Q. 21. And your step father?

A. Right.

Q. 22. Do you have any brothers and sisters?

A. Yes, sir.

Q. 23. How many at the house besides your mother and your step father and you?

A. One other brother.

Q. 24. Was he living there on the 16th day of February?

A. No, sir.

Q. 25. Where was he?

A. Yes, sir. Yes, sir. He was there.

[33] Q. 26. When you got up about 7:00 what did you do next?

A. That's when I got in the car.

Q. 27. Where was the car located?

A. On Murray Street in front of George's.

Q. 28. How many other people were in the car?

A. At first there was two, then there was another. He got out and another got in the car, laid down in the back seat and went to sleep.

Q. 29. So there were four other people besides you who were in the car sometime that evening, is that

right?

A. Yes, sir.

Q. 30. How long did you stay in the car yourself?

A. From the time I got out of bed and got up. I'd say from 7:30 to 2:00 in the morning.

Q. 31. So you sat in this car approximately seven hours then?

A. Right.

Q. 32. And during that course of time four other people were in the car?

A. Right.

Q. 33. What did you do while you were in the car?

A. Just sitting. It was raining, you know, just sat there.

Q. 34. And you were feeling so badly you had to go to bed but you went out and sat in the car for seven hours?

[34] A. That was during the time that I first come home.

Q. 35. But you were feeling better?

A. I took medicine.

Q. 36. You're telling the jury now, if I get it correct, that you were feeling badly when you came back from Kentucky State?

A. Right.

Q. 37. You went to bed?

A. Right.

Q. 38. And about 7:00 of a night you say it was raining you'd taken some medicine and you went out and sat in the car until 2:00 in the morning, is that right?

A. Right.

Q. 39. You heard Mr. Maddox testify that he had known you for a few years. He told the truth, didn't he?

A. Yes, sir.

Q. 40. You heard him testify that you had been down at his house on Rosewood on previous occasions, hadn't you?

A. Right.

Q. 41. He told the truth, didn't he?

A. Yes, sir.

Q. 42. You heard him testify that he knew you real well, didn't you?

[35] A. Right.

Q. 43. He told the truth, didn't he?

A. Yes, sir.

Mr. Corns. That's all.

#### RE-DIRECT EXAMINATION

By Mr. Judy:

Q. 1. Mr. Taylor, did he tell the truth when he said that you hit him over the head and took his wallet?

A. No, sir.

Q. 2. Have you ever had an occasion to talk with him that when he's indicated to you that his memory, he's got trouble remembering things?

A. Yes, sir. I'd been to his house and he told me he didn't even remember who had been to his house,

you know.

Mr. Corns. I object. That was not on direct examination or cross examination.

The Court. Overruled.

Mr. Judy. That's all I have, Your Honor.

Mr. Corns. No further questions.

[Witness excused.]

[36] Mr. Judy. That's the case for the defendant, Your Honor.

The Court. Ladies and gentlemen, we'll recess for a few minutes. You're not to discuss the case among yourselves or let anyone else discuss it with you. If anyone attempts to do so you must report it immediately to the Court.

[Whereupon, the following was heard in Cham-

bers:]

Mr. Judy. Comes the defendant and moves the Court to enter an order directing a verdict in favor of the defendant herein on the grounds that the Commonwealth has failed to meet its burden of proof and make out a prima facie case setting forth the elements of the offense charged in the trial herein, against the defendant, Michael Wayne Taylor, and therefore, a verdict of not guilty should be entered.

The COURT. Overruled.

Mr. Corns. I object to the unlawful taking instruction because it is a misstatement. If he admitted being there I think he would be entitled to the instruction.

Mr. Judy. The defendant objects to the failure of the Court to give the tendered instructions two, three, four, five and six and for failure to state the whole law of the case and under the objection which will [37] be dictated at the conclusion of the trial.

[Whereupon, the following was heard in open

Court:]

The Court. All right. These are your instructions as to the law applicable to the facts you've heard in evidence from the witness stand in this case.

Number one, you will find the defendant guilty under this instruction if and only if you believe from the evidence beyond a reasonable doubt all of the following: A. That in this county on or about February 16, 1976 and before the finding of the indictment herein, he the defendant stole a sum of money and a house key from James Maddox, 249 Rosewood, Frankfort, Kentucky; and B. in the course of so doing he used physical force on James Maddox. If you find the defendant guilty under this instruction you will fix his punishment at confinement in the penitentiary for not less than five nor more than ten years in your discretion.

Number two, if upon the whole case you have a reasonable doubt as to the defendant's guilt you will find him not guilty. The term 'reasonable doubt' as used in these instructions means a substantial doubt, a real doubt, in that you must ask yourself not whether a better case might have been proved but whether after hearing all the evidence you actually doubt that the defendant is guilty.

Number three, the verdict of the jury must be [38] unanimous and be signed by one of you as foreman. You may use the form provided at the end of these instructions for writing your verdict.

There is appended to these instructions a form with alternate verdicts, one of which you will use: A.

We the jury find the defendant not guilty; B. We the jury find the defendant guilty under instruction number one and fix his punishment at blank years in the penitentiary.

Mr. Judy.

Mr. Judy. May it please the Court, Mr. Corns, ladies and gentlemen. For those of you who haven't sat on a jury before this is what's called closing argument. It hasn't been a long trial but it's been a very serious, very, very serious matter and the brevity of it should not lend you to think anything but that it is a serious matter. What we're talking about here today is the liberty of a young man who's just turned twenty years of age, for a period of five to ten years and that's a long time when you think back to what a five year period or ten year period of your life has comprised. So, your responsibility is enlarged by the fact that you have two ways you can go, two outsone, you can find the boy if you believe beyond a reasonable doubt he is guilty, a period of five to ten years or not guilty is the other one and I believe is the most appropriate.

My responsibility is especially acute because I realize that, you know, after I sit down I don't have the [39] opportunity to get back up again and speak on behalf of Michael Wayne Taylor, that the responsibility of realizing that when I sit down possibly his fate for a period, a significant period of his life rests in your hands. So if I should call attention, your attention, fail to call your attention to something that is important I hope that you won't hold that against me. I hope that you will fully deliberate this matter. It's a very serious matter.

There's no question but what we have testimony which are on completely opposite sides of the pole

there. You can choose as you like to believe Mr. Maddox who admitted, has admitted that he had had young people down to his place over in the project, people under twenty-one, he's given beer to them, and that they've socialized with him and it kind of turns out as far as I'm concerned, that's kind of a neighborhood hangout.

Mr. Corns. Objection.

The Court. You're testifying now.

Mr. Judy. The testimony and the effect of the testimony, of course, you all have heard, you all have had an opportunity to view and to see the principle people—Mr. Maddox and Mike Taylor. It's your all's duty to weigh and decide as finders of the fact who you believe.

Michael Taylor has taken the stand under oath and has told you about himself, has told you that he did not rob Mr. Maddox and knock him down and take his wallet. There's been no showing of any motive of why Michael Taylor would do that. There's [40] been no showing that Michael Taylor was destitute, poverty stricken, that he needed money. There's been no showing that Michael Taylor had anything in for Mr. Maddox, to the contrary—he knew him. Now, I can submit to you that if Michael Taylor was going to rob somebody he certainly wouldn't rob somebody that he knew and who knew or that he was known to that person.

It's my opinion that Mr. Maddox is confused. He indicated to you that he had worked that day tending bar and that night he hadn't had anything to drink and, of course, you can evaluate that. And he also indicated that he was going to bed at 8:15, evaluate that, and the circumstances just don't add up. No motive has been shown why Michael Taylor would commit this offense.

You haven't heard any police officers come in today and testify that they arrested Mike Taylor and they found him to be in possession of any wallet or keys or papers belonging to this complaining witness, no testimony that any search of his premises produced any of these things that were taken from Mr. Maddox. There really has been nothing that Mr. Maddox thinking that Mike Taylor was the one that knocked him down, that has us here today and I question, very seriously question that testimony and I believe if you watched the witnesses, watched their demeanor and have the opportunity to evaluate them that you too will have some doubt about that.

Now, you've been given the instructions. As I indicated to you in the voire dire when we talked about the [41] questions and answers at the very beginning, that you all subscribe to the principle of the presumption of innocence, that Michael Taylor is presumed innocent—and I believe he is innocent—that that presumption remains with him throughout the trial. He has no burden to put on any proof and it is the, it's the obligation and responsibility of the Commonwealth to prove his guilt beyond a reasonable doubt.

Now, what is reasonable doubt? Well, I believe reasonable doubt is if you've heard one side of the testimony and you say well, I think that testimony is believable, the Commonwealth's testimony. Then you hear the defense testimony, the defendant testify and after the defendant gets off the stand you say I watched that fellow, I heard what he had to say and I don't, I just don't believe he's the one that did this thing.

Well, if you come to that impasse where you've got, where you believe the defendant equally as well as you do the prosecuting witness that's reasonable doubt. That's taking that Principle and applying it on a very basic level. That's the level that we have here.

I think that if you carefully evaluate the witnesses that you will believe as I do, that Michael Taylor is innocent of this charge, that Michael Taylor is not one of these two people that were down there on this evening and that there has not been evidence sufficient enough to warrant conviction of Michael Taylor, let alone to sentence him to five or ten years confinement [42] in the penitentiary. I do not believe that that evidence has been Presented and I feel in my heart that you all believe that also. Therefore, I ask on behalf of Mike Taylor that you do render a verdict of not guilty and that you require more of the Commonwealth and that you set him free to go back to his parents, go back to his way of life.

Thank you.

The Court. Mr. Corns.

Mr. Corns. May it please the Court, Mr. Judy, ladies and gentlemen. On behalf of the prosecution and I'm sure the Court, I want to thank each of you for serving today in this capacity. We're most grateful.

I never want to close my Commonwealth case without assuring each juror that I don't have anything
personal against the defendant who is on trial and
that is certainly true in this case. I never even knew
this defendant until I was Commonwealth's attorney.
So the remarks I make are not made because I have
any ill will against this defendant but because I believe that the evidence clearly shows a serious crime
has been committed and that this defendant has got
to pay for that crime.

Before I talk with you further about the evidence let me mention a few things Mr. Judy has brought to your attention. First of all, reasonable doubt. This defendant, like every other defendant who's ever been tried who's in the penitentiary or in the reformatory today, has this presumption of innocence until [43] proven guilty beyond a reasonable doubt. That's just a presumption on his behalf and if you will look at the instruction that the Court gave you as to what reasonable doubt is, I think you will conclude the Commonwealth has far in excess proved beyond a reasonable doubt, without a question, this defendant committed the crime with which he's charged. Notice how the Court has defined for you in the instruction the term 'reasonable doubt', means a substantial doubt, a real doubt, in that you must ask yourself not whether a better case might have been proved but whether after hearing all the evidence you actually doubt that the defendant is guilty.

Secondly, Mr. Judy has said where is the wallet. Well, this defendant is sharp enough he knows to get rid of the wallet and the things of that nature. You don't keep evidence of a crime around. One of the first things defendants do after they rip someone off, they get rid of the evidence as fast and as quickly as they can.

This is merely a case of contrast in a large sense. You have a very youthful defendant and a gentleman who is the complaining witness two and a half times his age. You have one who pays for what he gets; the other who takes what he wants. You have one who respects the law and who works at it six days a week; you have another one who has no respect for the law.

a big doubt

In the language of the day this is what we would rall a rip off. Mr. Maddox was ripped off by this defendant. [44] Sometimes it's hard to visualize how the crime occurred sitting in here in the courtroom. You're not down there when this fellow gets struck in the head and knocked on the floor and his other companion jump upon him and hold him and he got his key out of his front pocket and then ripped his billfold out of his back pocket. Sometimes we forget how ugly and how horrible a crime is so don't kid yourself. Mr. Maddox was rolled. He was ripped off by this defendant but they like to come into court and play on your sympathy. They don't want you to make your mind go back to the crime and to those events that took place. They want you to look at them and say well, I wouldn't do anything like that, you just know I wouldn't.

This defendant had the three basic prerequisites which a criminal desires. He had time, he had the opportunity and he had the motive. What was the motive? Money. He was working part time over here at Spencer's Cafe cleaning up for just a few dollars a week but he thought Mr. Maddox would be an easy touch. He's down there living alone, he's got his buddy with him and they'll just roll him with no other witnesses. And that's why they had no other witnesses. He chose the time, he chose the place so there wouldn't be any other witnesses.

I think the best way that you might judge the case is just ask yourself this question. Who is telling me the truth? It's neither Mr. Judy or I who is on trial. It's this gentleman who's on trial and you've got to decide which one is telling the [45] truth. None of us were there. Who is the one who would have the least

interest in telling you anything but the troth, Who is the one who would be most likely to tell you the truth? Mr. Maddox. What would he gain by making a charge against this defendant? What would he gain by coming to court? Nothing, except he wants to be protected from people like this defendant. He says I have a right to be protected, I'm willing to get involved and we're living in a day and time that so many people don't want to get involved. But he's willing to come in here and tell you what happened. What reason would he have to tell you other than the truth. Did he indicate to you he's a man of vengeance, a man who wants to get revenge? I don't think so.

Now, look at this defendant. What reason would he have to tell you the truth? Not any because he knows if he tells you what he did you're going to give him what he deserves, a trip to the penitentiary. That's

exactly what he's earned.

Now, look at his story. He lives with his mother and step father. He says on that day he was sick, he was so sick he had to go to bed at 2:00 and stayed there until 7:00. Did you hear his mother or his step father come in and testify he was home sleeping. I wonder why they didn't. That would be the first thing you would do. They usually if at all possible bring in their relatives to testify on their behalf. I submit that's because he wasn't home in bed sleeping till 7:00 that evening. Even assuming he was, he said I was sick a sick man, so sick I [46] had to go to bed for five hours, take a medication. Does a sick man get up out of a sick bed at 7:00 and go out and sit in a car until 2 A.M. in the morning? Ask yourself that question. Do you believe that? If you do, he's entitled to be set free. That's a long time, seven to 2 A.M. That's seven hours sitting in a car that won't run. What's he doing out there for seven hours? Ask

yourself that question. And how many people did he say were in the car with him that night? Four other people. How many did he bring in here today to tell you they were with him? Where are they? There's not a one of them here, is there? Don't you know if they were with him and he was out there he would have the whole group in here but you didn't hear a one, for the simple reason he wasn't out there. He was with this other fellow and he ripped off Mr. Maddox and took his money, his papers and his keys. They were out on the town with what little money they got.

I always make a recommendation to the jury and I always tell them that I never try to tell them what to do. I only share my thoughts and my opinions with you and it's up to you to decide what punishment you will give out to the defendant. I think this defendant has earned the maximum period of ten years but that's up to you to decide. And I want to tell you why.

First of all, he took this man's wallet. Now, it only contained ten to fifteen dollars. Now, when you first look at that that doesn't seem like much money. If it were 150 or \$1500.00 it would seem like a much more serious crime but to this [47] man here who has a very limited education and a very limited income, ten to fifteen dollars is a lot of money and I've been in that situation where that's all I had and if that's all you've got and they take it from you, you've suffered a terrible loss. If you'll recall from the Bible the widow who gave her life gave more than all the other people who brought in storehouses of treasures because she gave in accordance with her income. This man lost and they took all he had. Of course, they didn't know how much he had at the time. They hoped it was more but whatever

it was they took it and they made him pay, so don't kid yourself.

Not only did he take his billfold and his money but he took his papers. There's nothing more frustrating to people than to have someone steal their personal papers, their Social Security card, your birth records, your birth certificate which he said was in his wallet, his rent receipt. These are things which are of inestimable value and not only did they take his money and his wallet and his papers, they took what I think is a person's most important possession today, his house key. Now, I submit although it's small in size there is nothing more important to you than the key to your own house, whether you've got the best house in the county over here on the hill or whether you live in the project, over here in the project, when someone else steals your key they've got the access to come and go in your house. So I think this defendant has earned the maximum of ten years and I'm asking you to consider that.

[48] In closing, he's got a very simple philosophy. This defendant says what's mine is mine; I will keep it. What's yours is mine; I will take it. That's not only his philosophy, that's what he practices. That's what he did and Mr. Maddox is saying to you please afford me the same protection of the law that everyone else is accorded.

The Court. Ladies and gentlemen, you will now retire to the jury room to make your verdict. The Sheriff will deliver the instructions to you.

[Whereupon, the jury retired to the jury room and after deliberation, the following was heard in open Court:]

The Court. Has the jury reached a verdict?

Mr. Sanders. Yes, sir.

The Court. Will you read the verdict, please?

Mr. Sanders. We the jury find the defendant guilty under instruction number one and fix his punishment, at five years in the penitentiary.

The Court. That is the verdict of each and all of you ladies and gentlemen? You wish to have the jury polled, Mr. Judy?

Mr. Juny, No. Your Honor.

The Court. Hand the verdict up, please, Mr. Sheriff. [49] Mr. Judy. Comes the defendant and pursuant to leave of Court, files with the Court Reporter the tendered instructions two, three, four and five which the Court considered and refused to give as the law of this case and instead gave the instructions submitted to the Court by the Commonwealth, to which the defendant objected. The defendant objects to the instructions as given by the Court in that they did not totally set forth the law of the case and provide the jury with the appropriate instructions with which they could render a verdict consistent with the evidence.

The court did not give instruction number two as tendered by the defendant and the defendant states that it is proper and was proper for the Court to give this instruction because under the evidence of the case, the Court could have found the defendant guilty under this instruction and sentenced him to twelve (12) months in jail and a fine not to exceed \$500.00.

The defendant objects to the failure to give instruction number three with regard to reasonable doubt as set forth in the tendered instructions as being the proper instruction which should have been given in order to advise the jury that there are degrees of the offense which they could have considered and that they could have found him guilty upon a lower degree than that which they returned a verdict of guilty for, The defendant objects to the Court's failure to give tendered instruction number four which instructs the jury that the defendant is presumed to be innocent of the crime and that he starts the trial with a clean slate and no evidence against [49a] him and that this presumption of innocence alone is sufficient to acquit the defendant. The Court in none of its other instructions so charges the jury with this very basic and fundamental principle of judicial fair play. It was error for the Court to refuse to give this instruction and the failure to do so was prejudicial to the defendant.

The defendant objects to the failure of the Court to give tendered instruction number five which provides an instruction to the jury that the indictment which was read into evidence is in no way any evidence against the defendant and that no adverse inference can be drawn against the defendant from a finding of the indictment. The defendant states that the failure of the Court to so instruct the jury is prejudicial against the defendant because the jury is left free to consider the indictment as probative evidence just as any other evidence which they heard during the trial of this action and unless the jury is instructed that the indictment has no probative force and carries no implication of guilt then the jury is left free to consider this evidence as it considers all other evidence which it received in the trial of this case.

## INSTRUCTION No. 2

# [Tendered by Defendant]

If you do not find the defendant guilty under Instruction No. , you will find him guilty under

this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in this county or on about February 16, 1976, and before the finding of the indictment herein, he took a wallet belonging to James Maddox of Frankfort, Kentucky, containing \$10.00 to \$15.00 and his house key;

(b) That in so doing he intended to deprive James Maddox of his wallet containing \$10.00 to \$15.00 and his house key;

### AND

(c) That he knew the wallet and house key was the property of someone other than himself.

If you find the defendant guilty under this Instruction, you will fix his punishment as confinement in the County Jail for a period not to exceed twelve (12) months, at a fine not to exceed \$500.00, or at both confinement and fine, in your discretion.

The word "Deprive" as used in this Instruction means to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value or with intent to restore only upon payment of reward or other like compensation or to dispose of the property so as to make it unlikely that the owner will recover it.

# INSTRUCTION No. 3

# [Tendered by Defendant]

If upon the whole case you have a reasonable doubt as to the defendant's guilt, you shall find him not guilty. If you find him guilty, but have a reasonable doubt as to the degree of the offense of which he is guilty, you shall find him guilty of the lower degree. (The term "reasonable doubt" as used in these instructions means a substantial doubt, a real doubt, and that you must ask yourself not whether a better case might have been proved, but whether, having hearing all of the evidence, you actually doubt that the defendant is guilty.)

## INSTRUCTION No. 4

# [Tendered by Defendant]

The law presumes a defendant to be innocent of a crime. Thus a defendant, although accused, begins the trial with a "clean slate". That is, with no evidence against him. The law permits nothing but legal evidence presented before a jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all of the evidence in the case.

# INSTRUCTION No. 5

# [Tendered by Defendant]

The jury is instructed that an indictment is in no way any evidence against the defendant and no adverse inference can be drawn against the defendant from a finding of the indictment. The indictment is merely a written accusation charging the defendant with the commission of a crime. It has no probative force and carries with it no implication of guilt.

[Opinion rendered: April 1, 1977]

[To be published]

COURT OF APPEALS OF KENTUCKY

No. CA-152-MR

MICHAEL TAYLOR, APPELLANT

W.

Commonwealth of Kentucky, appellee Appeal from Franklin Circuit Court, Honorable Henry Meigs, Judge, Criminal Action No. 7844

Affirming in Part; Reversing in Part

Before HAYES, HOWARD, and WILHOIT, Judges

HOWARD, Judge: Michael Taylor was convicted by a Franklin Circuit Court jury of violating Ky. Rev. Stat. Ch. 515.030 (hereinafter KRS), to wit second degree robbery. Evidence was presented that Taylor along with an accomplice went twice to the home of James Maddox on the evening of February 16, 1976. On the second visit when Maddox again would not allow them to enter his home, Taylor hit him and took his wallet and house key. Taylor and Maddox were the only witnesses to testify at the trial. Maddox testified that he had known Taylor for approximately 15 years and was certain he was the person who robbed him. The appellant denied the robbery testifying that he was in a parked automobile with three other persons the entire evening.

Defense counsel tendered and requested that an instruction on presumption of innocence be given to the jury. The trial court refused the request, but gave an instruction on reasonable doubt. The appellant contends that he was substantially prejudiced by the trial court's failure to instruct on presumption of innocence. We find no evidence to support this contention. The well established law of Kentucky has been that as long as the trial court instructs the jury on reasonable doubt an instruction on the presumption of innocence is not necessary. Mink v. Commonwealth, 228 Ky. 674, 15 S.W. 2d 463 (1926); Swango v. Commonwealth, 291 Ky. 690, 165 S.W. 2d 182 (1942). We find no reason to change the established law on this point.

The second error appellant asserts on appeal is that he was substantially prejudiced by the trial court's failure to instruct on the indictment's lack of evidentiary value. We find no merit in the appellant's argument that failure to give such an instruction denies

the defendant due process of the law.

In his closing argument the prosecutor made reference to facts which had not been placed into evidence concerning the defendant's character. While the Kentucky court has held in several cases that such remarks are improper and allowed reversal of the case on that point, the defendant failed to object to these remarks thus not preserving them for appellate review. Lynch v. Commonwealth, Ky., 472 S.W. 2d 263 (1971). We do not feel that the statements meet the standard of prejudice of being so apparent and great as to result in a manifest injustice as set forth in Ferguson v. Commonwealth, Ky., 512 S.W. 2d 501 (1974) and Futrell v. Commonwealth, Ky., 437 S.W.

2d 487 (1969), to allow reversal on the impropriety in the argument despite defendant's failure to object at the proper time.

The appellant contends that no presentencing investigation was made in his case as required by KRS 532.050 before he was sentenced nor was the question of probation or conditional discharge as provided in KRS 533.010 considered. It appears after examining the record that these allegations are correct. The recent Supreme Court case of Brewer v. Commonwealth, Ky, - S.W. 2d - (Jan. 14, 1977) (24 Ky. Law Summary 1) held that the requirements of KRS 532.050 are mandatory and not within the discretion of the trial court judge. In regard to KRS 533.010 the Supreme Court in Brewer, supra stated that this determination by the court is discretionary rather than mandatory but stated that the statute requires that probation or conditional discharge be given consideration.

Therefore, we find no error in the verdict of the jury, but we do find error in the trial court's sentencing procedure. On the latter point, this case is reversed with directions to the Franklin Circuit Court to take appropriate action consistent with this opinion.

Judge Hayes concurring, Judge Wilhort dissenting,

Attorney for the Appellant: Hon. J. Vincent Aprile, II, Assistant Deputy Public Defender, 625 Leawood Drive, Frankfort, KY 40601.

Attorney for the Appellee: Hon. Guy C. Shearer, Assistant Attorney General, Capitol Building, Frankfort, KY 40601.

# COURT OF APPEALS OF KENTUCKY

### CA-152-MR

MICHAEL TAYLOR, APPELLANT
v.
COMMONWEALTH OF KENTUCKY, APPELLEE

Appeal from Franklin Circuit Court, Honorable Henry Meigs, Judge, Indictment No. 7844

# Dissenting

WILHOIT, Judge: I respectfully dissent from so much of the opinion of the majority as holds that an instruction on the presumption of innocence when requested need not be given by the court because the instruction on reasonable doubt suffices. It strikes me as bordering on the fatuous to say that a jury must be instructed on one of the most basic principles of our criminal law but not the other. The reason given for this anomaly in Kentucky jurisprudence has heretofore been that an instruction on the presumption of innocence is "too favorable to the defendant", Swango v. Commonwealth, 291 Ky. 690, 165 S.W. 2d 185 (1942). Most of those rights embodied in the modern concept of due process are "favorable to the defendant", but that is their very reason for existence. Not every person charged in a criminal complaint or indicted by a grand jury is guilty of a crime. In recognition of this, our system has built in certain safeguards to protect the innocent. One of these safeguards is the so-called presumption of innocence of a criminal defendant. There is certainly no such presumption in the minds of jurors about to try a case. In fact, by the time the indictment is read to the jurors, the opposite presumption is likely to be present in their minds. The law builds in the presumption of innocence, but it is of no use to the defendant if the jury is never told about it.

While an instruction on reasonable doubt does much the same thing that one on the presumption of innocence would do, I believe there is a subtle distinction between the two and one does not completely perform the job of the other. As pointed out by Wigmore, the concept of presumption of innocence "cautions the jury to put away from their minds all of the suspicion that arises from the arrest, the indictment, and the arraignment and to reach their conclusion solely from the legal evidence adduced." He further points out that this caution is "indeed particularly needed in criminal cases". IX J. Wigmore, Evidence § 2511 (3d ed. 1940).

I believe the Supreme Court of Kentucky would now reject the old line of cases relied upon by the majority.

Attorney for Appellant: J. Vincent Aprile, II. Ass't Public Defender, 625 Leawood Drive, Frankfort. Ky. 40601.

Attorney for Appellee: Guy C. Shearer, Ass't Attorney General, Capitol Building, Frankfort, Ky. 40601.

SUPREME COURT OF KENTUCKY SC-249-D

MICHAEL TAYLOR

MOVANT

V.

COMMONWEALTH OF KENTUCKY

RESPONDENT

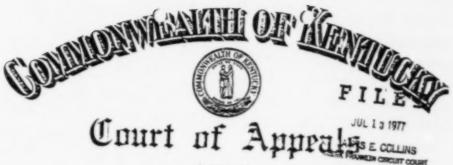
ORDER DENYING MOTION TO SUPPLEMENT RECORD AND ORDER DENYING DISCRETIONARY REVIEW

The motion of the Commonwealth of Kentucky that it be permitted to supplement the record in this proceeding is denied.

The motion of Michael Taylor for a review of the decision of the Court of Appeals is denied, and the decision stands affirmed.

ENTERED June 29 , 1977.

Chief Justice



MANDATE

MICHAEL TAYLOR

File No. CA-152-MR Common Rendered APRIL 1, 1977

Appear From FRANKLIN

Growt Court Action No. IND. #7844

COMMONWEALTH OF KENTUCKY

The Court being sufficiently advised, it seems the judgment herein is erroneous, in part.

It is therefore considered that the judgment be affirmed in part and reversed in part with directions to correct the judgment in conformity certified to said court.

JUNE 29, 1977 - Movant's Discretionary Review denied by the Supreme Court

A Copy - Attest

femal .. July 11, 1977

JOHN C SCOTT, CLERK

Supreme Court of the United States

No. 77-5549

MICHAEL TAYLOR, PETITIONER

v.

## KENTUCKY

ON PETITION FOR WRIT OF CERTIORARI TO the Court

of Appeals of the State of Kentucky.

On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

# [November 28, 1977.]

Mr. Justice Blackmun took no part in the consideration or decision of this petition.

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